[Sri K. Balasubramanya Ayyar] [11th November 1965

Otherwise he may speak at random (Laughter). Therefore it will be better if you give us some time and take up the motion for consideration tomorrow. If we find there is nothing important to mention about the rules, then we will immediately accept them.

THE HON. SRI R. VENKATARAMAN : I have no objection to the motion being taken up for discussion to-morrow.

I move, Sir,

'That the further discussion on the Government Motion be taken up to-morrow'.

MR. CHAIRMAN : The question is—

'That the further discussion on the Government Motion be taken up to-morrow'.

The motion was put and carried.

V.—GOVERNMENT BILLS.

(1) THE MADRAS SALES OF MOTOR SPIRIT TAXATION (AMENDMENT BILL, 1965 (L.A. BILL NO. 18 OF 1965).

THE HON. SRI R. VENKATARAMAN : Mr. Chairman, Sir, I move—

" That the Madras Sales of Motor Spirit Taxation (Amendment) Bill, 1965 [a] (L.A. Bill No. 18 of 1965), as passed by the Assembly, be taken into consideration."

Sir, under sub-section (1) of section 3 of the Madras Sales of Motor Spirit Taxation Act, 1939 (Madras Act VI of 1939) tax shall be levied on importers and wholesale dealers on all sales of motor spirit effected by them and on all motor spirit used or transferred for consumption by them. The Supreme Court held (in Bhopal Sugar Industries *vs.* Dube—1964 I SCJ 392) that consumption by an owner of goods, in which he deals, is not a sale within the meaning of the Sale of Goods Act, 1930, and, therefore, it is not sale within the meaning of Entry 54 of List II in the Seventh Schedule to the Constitution and that it is not competent for the State Legislature to levy sales tax on motor spirit consumed by the dealer himself for his own vehicles. To give effect to the above decision, it is proposed to amend section 3 (1) suitably and to make consequential amendment in section 6 of the Act.

Under sub-section (3) of section 3, if any person, not liable to tax in respect of any sale of motor spirit, collects any amount purporting to be by way of tax, he should pay over this amount to the Government. The Supreme Court held in Abdul Quadir's case (AIR 1964 SC 922) that a provision requiring that any amount collected by way of tax other than in accordance with the provisions of the Act should be paid over to Government was beyond the competence of the State Legislature. It is, accordingly, proposed to delete sub-section (3) of section 3.

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[a] Printed as Appendix II on pages 265–266 infra.

11th November 1965] [Sri R. Venkataraman]

According to sub-section (1) of section 4 of the Act, every person carrying on business in motor spirit should get himself registered as an importer or as a wholesale or retail dealer, as the case may be. Under sub-section (4) of that section, registration may be made subject to such conditions as may be prescribed. In 1959, the rules framed under the Act were amended prescribing a fee for the grant of a certificate of registration and also for the renewal of a certificate of registration. Though the levy of such fee could be justified as being a condition for the grant of registration, it is proposed to amend section 4 suitably so as to specifically empower the Government to make rules for the levy of fee for the grant of registration and for the renewal of registration and to give retrospective effect to the amendments from the 13th March 1959. Under sub-section (5) of section 4, no importer, wholesaler or retail dealer, shall carry on the business of public transport, requiring the use of motor spirit. This provision was intended to prevent loss of revenue that may arise by the dealer showing the motor spirit sold, as one consumed by them for their own use. From the 1st April 1958, tax is levied on importers and wholesale dealers only and retailers are not liable to tax. There is therefore, no necessity now to prevent the retail dealers from carrying on business in public transport, requiring the use of motor spirit. It is accordingly, proposed to amend the provision by omitting reference to retail dealers.

Under clause (*b*) of section 5, every retail dealer in motor spirit shall, in respect of each place of business submit the prescribed returns. Consequent on the shifting of taxation on motor spirit from the point of last sale by retailers to the point of first sale by the wholesalers and importers, submission of returns by the retailers is not necessary. But they will have to keep books of account for inspection by the officers under section 9 of the Act. It is, accordingly, proposed to recast section 5 and to make consequential amendments to certain other sections of the Act.

Provision has also been made for the placing of rules and orders, issued under the Act, on the Table of both the House of the Legislature, as recommended by the Committee on Subordinate Legislation.

I request the House to take the motion into consideration.

MR. CHAIRMAN : Motion moved—

"That the Madras Sales of Motor Spirit Taxation (Amendment) Bill, 1965 (L.A. Bill No. 18 of 1965), as passed by the Assembly, be taken into consideration."

SRI K. BALASUBRAMANYA AYYAR : Mr. Chairman, Sir, I welcome the various provisions in the Bill framed in accordance with the decision of the Supreme Court, namely, petrol consumed by the dealer himself is not liable to tax and it is not sale of goods.

So, that particular provision is sought to be omitted. It was not in the original Act (Act VI of 1939). It was introduced later in 1958. The Government have been collecting tax also on the petrol consumed by the wholesale dealer or the retail dealer. In the 1958 Act they made a change abolishing the retail dealer and the tax was levied on the wholesale dealer alone. That tax would have been collected from the year 1958 up to now based on a section which has been held to be void by the Supreme Court in another case. I would like to know what the Government propose to do with the tax that has been levied and collected up till now—that portion of the tax on petrol consumed by the wholesale dealer or the retail dealer.

THE HON. SRI R. VENKATARAMAN : The law will take its course.

SRI K. BALASUBRAMANYA AYYAR : That is all right but when the Government have collected a tax under a provision which has been held to be illegal by the Supreme Court, not under this Act but under some other Act—the principle enunciated by the Supreme Court will always apply and therefore it is that the Government have come up with an amendment to that section—it is but fair on the part of the Government to refund the tax not in the sense that the money should be paid back to those from whom it had been collected but they could credit it to other taxes due from them, year after year.

Then, Sir, there is another point. Under Act VI of 1958 the retail dealers were also taxed. The last provision in the amending Act says : 'Notwithstanding anything contained in the Act, there shall be levied on motor spirit in the possession of retail dealers at the commencement of this Act tax at the rate specified in section 3 of the principal Act as amended by this Act'. Therefore the same rate applies to the petrol intended for use and consumption also and therefore they would have paid enhanced rates on the motor spirit intended for consumption and sale. That difference also should be made there. The Government, I think, are not entitled to this tax where the retail dealers are in possession of petrol consumed by them. On the portion of the petrol sold, it is all right, and the Government are entitled to the tax.

Therefore, Sir, some arrangement should be made to repay the tax collected from 1958 to 1965. The Government want to give retrospective effect to some of the rules framed by them. Why not give retrospective effect to this also? They will get the refund then. (An hon. Member: It is all one way traffic.) In regard to taxation measures also they have given retrospective effect. If the Government did likewise here also it would be better. In the Bhopal case something like Rs. 6,000 was taxed on consumption of petrol by the company on their vehicles. Similarly here also there

11th November 1965] [Sri K. Balasubramanya Ayyar]

may be companies owning many vehicles, on account of the fact that credit is given for such expenditure in regard to income-tax—some companies own 30 to 50 vehicles. The tax collected should be refunded. It may be a fairly good sum, I think. This is tax cillected under a provision now held to be illegal. Even though the Government have not stated so here, the Supreme Court decision was about another Act. It is a very important point and we have accepted it. I am glad that the Government looked into the Bhopal Act. They might very well have overlooked it and gone on collecting the tax. They have been very careful and therefore they have brought in this measure. It is all very fair and quite all right. But if they refund the tax collected so far under an illegal provision, it will be very fair. Taxation measures should be construed strictly and wherever there is illegality, the Government should come forward to refund the amount collected or give credit for it. How to refund is a matter for them to look into.

திரு. க. அன்பழகன் : தலைவரவர்களே, இந்த திருத்த மசோதாவினால் பெட்ரோல் ரீடெய்ல் டீலர்களாக இருப்பவர்கள் இயல் 3–50 p.m.
பாகவே வரி செலுத்த வேண்டிய நிலையிலிருந்து விதி விலக்கு பெறுகிறார்கள், வருகிற திருத்தத்தின் படி. அப்படி விதி விலக்குப் பெறும்போது சொந்தத்துக்குப் பயன்படும் பெட்ரோலுக்கும் விதி விலக்கு பெறுகிறார்கள். அது இரண்டு வகையில் பயன்படுத்தப்படுவதற்கு இடமாகி வருகிறது. ஒன்று—அந்த பெட்ரோல் நிறுவனம் நடத்துவதற்கு, அல்லது பெட்ரோல் கம்பெனி தேவைக்கு. மற்றொரு வகை, பஸ், டாக்சி வைத்து நடத்துகிறவர்கள் அதற்குப் பயன்படுத்தும்போதும் சொந்தக் கணக்கில் எழுதுவதில் அது 'பர்சனல்' எனும் பெயரால் கணக்கில் வைத்துக் கொள்ளப்பட முடியும். ஆனால் இந்த பெட்ரோல் இன்னொரு தொழிலுக்குப் பயன்படுகிறது. இன்கம்டாக்ஸ் சட்டத்தின்படி இன்ன அளவுக்கு மேல் செலவு செய்தால் அது ஏற்றுக்கொள்ளப்படுவதில்லை என்று விதி இருக்கிறது. அது போல் பெட்ரோல் சொந்தத்துக்கு எடுத்துக் கொள்ளப்பட்டு விற்கப்படவில்லை என்றாலும் கூட, எது சொந்தத்துக்கு உரியது, எது சொந்தத்துக்கு உரியது அல்ல என்று பாகுபாடு செய்ய முடியுமா? எந்த அடிப்படையில் வரி விலக்கு அளிக்கப்படுகிறது என்று அறிய விரும்புகிறேன்.

* Sri S. K. SAMBANDHAN : Sir, this Bill has come only after the decision of the Supreme Court on an appeal by an assessee. If only the State Government had taken care to give instructions to the concerned authorities to be more practical, this situation would not have arisen. It is only a simple matter. Sales tax can be levied only on sales and not on personal consumption. Such kind of assessment by the authorities at their own will and pleasure without looking into the rhyme or reason, is not correct. Then the assessee has to go on appeal and further appeals. All these processes involve a cumbersome procedure and result in delay. If only the Government had been a little more careful to give instructions to their officers, there would not have been any diffi-

culty. I request the Government to see that in future at least proper instructions are issued to their officers whenever a rule or Bill is passed.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, the consumption of petrol or any of the oils, as has been very ably pointed out by Sri K. Anbazhagan, can be for two purposes, namely, one for carrying on his own business and the other for carrying on his own transport—personal use. The Government wanted to see that the petrol used by people bore the tax, that is, it is a tax on the commodity. It should be by way of an excise duty. It is only right, proper, and just, that a person who uses petrol must pay the tax. He has escaped in this case, because of a constitutional limitation and not because of any illegality committed by the Government. The people do not understand this. Any person who uses petrol is in a position to pay. He has got the capacity to pay. Therefore, it is the intention of Government that he should pay. But we are bound by a written Constitution, and in the written Constitution, the State has only certain powers. One of the powers is to levy a tax on sales. We have no powers to levy an excise duty. Since the State has the power to levy a tax on sale only and since personal consumption will not be a sale within the definition of the Sale of Goods Act, it has been held to be beyond the powers of the State Legislature to levy a tax on personal consumption. It has not been held illegal by virtue of anything done

SRI K. BALASUBRAMANYA AYYAR : It is void.

THE HON. SRI R. VENKATARAMAN : How is it void?

SRI K. BALASUBRAMANYA AYYAR : Void is void under the law.

*THE HON. SRI R. VENKATARAMAN : There are many things which are void. But one must understand the reason why it is void. I may do a right thing and a proper thing without authority. What I want to point out is that it is a right thing which has been done. Just because the Constitution does not give the power to the States to levy a tax, it has become void. The Government have accepted this position, because we have no power to levy a tax on things other than sales. This is not a sale coming with in the definition of the Sale of Goods Act. I am at pains to point out that it arises out a limitation of the authority of the State and not because of any wrong committed.

Mr. Sambandhan started drawing imaginary pictures of the Government having failed to look into this or that. The fact is that anybody who uses petrol must pay. After all it goes to augment the revenues of the State. (Interruption by Sri S. K. Sambandhan). It is a legal matter and I do not want to argue with the hon. Member. When I finish, he can say whatever he likes. But the legal aspect of it must be understood. A person uses petrol.

11th November 1965] [Sri R. Venkataraman]

It is just and proper he makes a contribution to the State revenues. But this levy of tax, under certain powers of the written Constitution, becomes void. The same thing if levied by the British Parliament would not be held illegal. The powers of the British Parliament are not limited by any written Constitution. We divide the powers and give certain powers to the State and give certain other powers to the Centre. Sometimes even a right thing or an equitable thing done, is outside the powers of the State, and, therefore, it is held void.

As far as refund is concerned, it is not necessary to give retrospective effect, because any person who has paid this tax can apply for refund. But he has to establish that certain quantities were used for his personal consumption. If he does this, he is always entitled to the refund. It is not necessary to provide for it in this Bill.

MR. CHAIRMAN : The question is :

"That the Madras Sales of Motor Spirit Taxation (Amendment) Bill, 1965 (L.A. Bill No. 18 of 1965), as passed by the Assembly, be taken into consideration."

The motion was put and carried and the Bill was taken into consideration.

Clauses 2 to 10 were put and carried.

Clause 1, the Long Title and the Enacting Formula were put and carried.

THE HON. SRI R. VENKATARAMAN : Mr. Chairman, Sir, I move—

"That the Madras Sales of Motor Spirit Taxation (Amendment) Bill, 1965 (L.A. Bill No. 18 of 1965), as passed by the Assembly, be passed."

MR. CHAIRMAN : The question is—

"That the Madras Sales of Motor Spirit Taxation (Amendment) Bill, 1965 (L.A. Bill No. 18 of 1965), as passed by the Assembly, be passed."

The motion was put and carried and the Bill was passed.

(2) THE MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (SECOND AMENDMENT) BILL, 1965 (L.A. BILL NO. 34 OF 1965).

* THE HON. SRI R. VENKATARAMAN : Sir, I move—

"That the Madras Hindu Religious and Charitable Endowments (Second Amendment) Bill, [a] 1965 (L.A. Bill No. 34 of 1965), as passed by the Assembly, be taken into consideration."

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a Printed as Appendix III on pages 267–268 infra.